

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of Financial and Insurance Services

Brian Barrick,

Petitioner,

v

**Case No. 04-425-L
Docket No. 2004-981**

**Office of Financial and Insurance
Services,**

Respondent.

For the Petitioner:

**Michael T. Maddaloni (P46733)
Merchant & Maddaloni, PC
115 W. Allegan Street, Suite 100
Lansing, MI 48933
(517) 374-7870
FAX (517) 374-7876
maddlaw@sbcglobal.net**

For the Respondent:

**William R. Peattie (P48004)
Office of Financial and Insurance Services
611 W. Ottawa, 3rd Floor
Lansing, MI 48933
(517) 335-2068
FAX (517) 241-2894
wpeatt@michigan.gov**

**Issued and entered
this 10th day of May 2005
by John R. Schoonmaker
Special Deputy Commissioner**

FINAL DECISION

**I
BACKGROUND**

The Administrative Law Judge issued a Proposal for Decision dated April 7, 2005. On factual grounds, she recommended that the Commissioner deny Petitioner's application for licensure as an insurance producer. No exceptions were filed.

II ANALYSIS

The Petitioner has applied for a resident insurance producer license. His application disclosed that he was convicted in 2003 of a felony.

MCL 500.1205(1) provides:

...An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

* * *

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

MCL 500.1239(1) provides:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

As explained and determined by the Commissioner in *Mazur v Office of Financial and Insurance Services*, Case No. 03-384 L, May 14, 2004, the absolute prohibition on licensing contained in MCL 500.1205(1) takes precedence over the discretion allowed in MCL 500.1239(1). There, the Commissioner stated:

Where statutes appear to conflict, a court or administrative agency is first supposed to look for a way to harmonize them. Here, the edict in Section 1205(1) allows for only one course for the Commissioner--disapproval of the application. Section 1239(1) allows the Commissioner discretion.

One attempt to bring harmony between the sections is to conclude that the Commissioner must exercise the discretion conferred by Section 1239(1) in light

of all the standards in Chapter 12, including Section 1205(1). That is, the Commissioner chooses to be guided by the clear standard of Section 1205(1) in her exercise of discretion.

Where harmony cannot be found between two conflicting statutes, then other principles of statutory construction emerge. The more recent statute may prevail over the earlier statute. The more particular provision may prevail of the more general provision.

Section 1205(1) and 1239(1) both became effective March 1, 2002, so this is no basis for deciding which governs. However, Section 1205(1) is particularly concerned with establishing standards for licensure. Section 1239(1) deals with general standards of conduct and remedies. Thus, it is appropriate for the Commissioner to be guided in this decision by Section 1205(1).

The Proposal for Decision is not adopted because it did not follow *Mazur*. This was incorrect in two respects. First, an Administrative Law Judge hears a case in the stead of the Commissioner, so the ALJ should apply rather than supplant the Commissioner's interpretation of the Insurance Code. Second, by virtue of the Final Decision in *Mazur*, the principal determined by the Commissioner is precedent. The Court of Appeals stated in *Detroit Auto. Inter-Insurance Exchange v Commissioner of Ins.*, 119 Mich App 113 (1982), as follows:

True, respondent has the power and duty to promulgate rules enforcing the statute and carrying out its provisions. [M.C.L. § 500.210](#); M.S.A. § 24.1210. However, an administrative agency need not always promulgate rules to cover every conceivable situation before enforcing a statute. Specifically, an administrative agency may announce new principles through adjudicative proceedings in addition to rule-making proceedings. The United States Supreme Court stated in [Securities and Exchange Comm. v. Chenery Corp.](#), 332 U.S. 194, 202, 67 S.Ct. 1575, 1580, 91 L.Ed. 1995 (1947):

"Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of

action to the exclusion of the other is to exalt form over necessity."

The Commissioner acted within her authority to enunciate a principle of general applicability through her contested case decision.

III FINDINGS OF FACT

Based upon the foregoing considerations, it is found that:

1. The Petitioner has applied for a resident producers license.
2. The Petitioner was convicted of a felony in 2003.

IV CONCLUSIONS OF LAW

Based upon a review of applicable laws, the Commissioner shall not approve the Petitioner's application for a license due to his felony conviction.

V ORDER

Therefore, it is ORDERED that the Petitioner's application for license is denied.